

SERVED: June 15, 2005

NTSB Order No. EA-5164

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 13th day of June, 2005

_____	)	
Petition of	)	
	)	
THOMAS WILLIAM BEAMER,	)	
	)	
for review of the denial by the	)	
Administrator of the Federal	)	Docket CD-39
Aviation Administration of the	)	
issuance of an airman rating	)	
certificate.	)	
_____	)	

**OPINION AND ORDER**

Petitioner appeals the May 20, 2004, Order of Chief Administrative Law Judge William E. Fowler, Jr., denying petitioner's challenge of the Administrator's denial of his application for airplane multi-engine land rating for his private pilot certificate.<sup>1</sup> We deny the appeal.

Petitioner submitted his airman application on or about

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<sup>1</sup> An excerpt from the hearing transcript containing the law judge's decision is attached.

September 6, 2003, in connection with a practical test that was administered by FAA Inspector William Spych, Jr.<sup>2</sup> Upon review of petitioner's application, however, the Administrator was unable to determine if petitioner, "possess[ed] the necessary qualifications to hold an airman certificate," and denied the application by letter dated December 18, 2003. By the same letter, the Administrator advised petitioner that he was no longer authorized to exercise the privileges of the temporary certificate issued by Inspector Spych. Simply put, the Administrator maintains that Inspector Spych was not authorized to administer a practical test to petitioner.

According to testimony at the hearing, Inspector Spych works in the FAA's Certificate Management Office ("CMO") for Delta Air Lines, in Atlanta. The CMO oversees Delta's operations under its FAA-issued operating certificate. On Saturday, September 6, 2003, Inspector Spych administered, at petitioner's request, a checkride, or practical test, to petitioner for a multi-engine rating. The checkride was administered at and near South Jersey Regional Airport in Lumberton, New Jersey.

FAA Inspector Harry Nutter, a supervisory principal operations inspector with the Delta CMO, testified that Inspector Spych was never authorized nor qualified to administer the

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<sup>2</sup> The Administrator stipulated that a practical test, including a 2.4 hour flight segment, did take place.

checkride to petitioner. Inspector Nutter explained that Inspector Spych's official functions on behalf of the FAA were limited to CMO activity regarding Delta oversight, and that Inspector Spych was neither qualified nor authorized to administer a checkride in "Type I" aircraft such as the light aircraft petitioner flew during his checkride with Inspector Spych. FAA Inspector Francis De Joseph, as supervisor in the Atlanta Flight Standards District Office, generally corroborated Inspector Nutter's testimony that Inspector Spych was not qualified or authorized to give checkrides such as the one he administered to petitioner on September 6, 2003. The record indicates that there is an FAA personnel action pending against Inspector Spych. Inspector Spych testified that, in his opinion, he had "implied authority" to administer the checkride to petitioner, but he also admitted during cross-examination that his actions did not comply with several requirements set forth in FAA orders pertaining to administering checkrides.<sup>3</sup>

The law judge denied petitioner's petition, finding, essentially, that petitioner had not demonstrated he is qualified to hold the certificate he applied for. Specifically, the law judge credited the Administrator's determination that Inspector Spych was, "acting out of the scope of his authority and was not authorized," to give the practical test he administered to

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<sup>3</sup> See, e.g., Hearing Transcript, pp. 199-212.

petitioner on September 6, 2003.

On appeal, petitioner essentially argues his opinion that Inspector Spych was authorized to administer the test, and that there is no evidence that he is not qualified to hold the airman rating he applied for. The Administrator argues that petitioner fails to meet his burden to demonstrate that he is entitled to the multi-engine rating.

We affirm the law judge's denial of petitioner's petition.<sup>4</sup> This case presents an issue of first impression, and we hold that petitioner's attempts to litigate the scope of Inspector Spych's authority are not cognizable. It is unfortunate that petitioner was apparently led by Inspector Spych to wrongly believe that he was receiving an official, sanctioned FAA practical test, particularly so because petitioner incurred expenses to rent a multi-engine aircraft for the 2.4-hour flight portion of the practical test. Nevertheless, this is a safety proceeding, and the Administrator, as head of the regulatory agency that issues airman certificates, is entitled, solely at her discretion, to designate who is authorized to evaluate the qualifications of airman applicants on her behalf. Where, as here, no showing has been made that Inspector Spych was in fact authorized by the

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<sup>4</sup> We admit some dismay that petitioner has gone through all the effort involved in this proceeding, when he could have simply sought another, valid practical examination through the FAA's local Flight Standards District Office or an authorized Designated Pilot Examiner.

Administrator to administer the checkride to petitioner, the practical result is as if a test was never administered. Under the circumstances, petitioner has not, and cannot, meet his burden to demonstrate he is qualified for the rating he seeks.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Petitioner's appeal is denied; and
2. The law judge's order dismissing petitioner's petition is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HEALING, and HERSMAN, Members of the Board, concurred in the above opinion and order.